IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.30002 of 2003

The Joint Director of School Education (Personnel),
Chennai-600 006. .. Petitioner

vs.

1. N.Venugopal

2.The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

For petitioner : Mr.V.Raghupathy, Government Pleader
For respondents: Mr.Anand for M/s.Anand & Surya for R-1
R-2 Tribunal

ORDER

R.Sudhakar,J.

The prayer in the writ petition is for issuance of a writ of certiorari, calling for the records pertaining to the order dated 23.1.2003 and made in O.A.No.8090 of 2001 on the file of the Tamil Nadu Administrative Tribunal, Madras, the second respondent herein and quash the same.

2. The petitioner in this case is the Joint Director of School Education (Personnel), Chennai, challenging the order of the second respondent-Tribunal, allowing the application filed by the first respondent, thereby setting aside his suspension order and consequently allowing the first respondent to retire with effect from 31.5.2001 with all benefits.

3. Brief facts of the case are as follows:

The first respondent-Teacher was working as B.T. Assistant (Tamil) in Government High School, Sholavaram from 1998. The first respondent was arrested on 20.5.1998 by the Crime Branch-CID, Metro Wing in connection with Crime No.616 of 1998 for committing theft of X Standard and +2 Public Examination question papers for the various subjects. Since in the abovesaid criminal case, the first respondent was arrayed as accused No.2, he was

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placed under suspension - vide - proceeding Rc.No.58925/C8/C31/98 dated 8.6.1998 passed by the petitioner herein. A charge memo in Rc.No.58925/C8/C31/98 dated 14.7.1998 was issued to the first respondent for his involvement in the theft of question papers, which was an act of indiscipline unbecoming of a Government servant, violating the Tamil Nadu Government Servants Conduct Rules. The first respondent submitted his explanations on 6.8.1998, 2.2.1999, 26.9.2000 and 16.5.2001 and in the meanwhile, he approached the second respondent-Tribunal, challenging the order of suspension, dated 8.6.1998 by filing O.A.NO.734 of 1999. In the meanwhile, the criminal case ended in acquittal by judgment dated 31.3.2000. The second respondent-Tribunal, by order dated 24.4.2001, set aside the order of suspension dated 8.6.1998. Thereafter, the first respondent was reinstated into service on 25.5.2001 pursuant to the order of the Tribunal. However, the first respondent attained the age of superannuation on 31.5.2001. The first respondent was not permitted to retire from service in view of the enquiry into grave charges pending against him. The petitioner further issued an order on 30.5.2001 retaining the first respondent in service and directed that he shall be deemed to be on extension of service beyond 31.5.2001, in view of the grave charges pending in departmental proceedings, and until final orders are passed by the competent authority. Therefore, on 30.5.2001, by and the order of the petitioner, the first respondent was once again placed under suspension pending enquiry. The enquiry officer submitted a report dated 18.9.2001 holding that the charges levelled against the first respondent were proved and his statement of defence was rejected and held that the first respondent had violated Government Employee Conduct Rule 20. Before the disciplinary proceeding could be finally concluded, the first respondent once again approached the second respondent-Tribunal, challenging the order dated 30.5.2001, whereby the first respondent was not permitted to retire from service on attaining the age of superannuation pending enquiry. O.A.No.8090 of 2001 was admitted and by order dated 21.12.2001, the Tribunal directed that the first respondent should be permitted to retire without prejudice to the disciplinary proceedings and subject to the result of the said Original Application. The first respondent was thereafter permitted to retire by proceeding RC.58925/C8/C31/98, dated 28.2.2002 without prejudice to the pending disciplinary proceedings and the criminal appeal if any filed against the judgment dated 31.3.2000 passed by X Metropolitan Magistrate in C.C.No.5717 of 1998. Subsequently, by order dated 23.1.2003, the second respondent-Tribunal allowed O.A.No.8090 of 2001 and held that the first respondent shall be deemed to have retired with effect from 31.5.2001 with all retirement benefits. It is against this order that this writ petition has been filed.

4. Challenge in this writ petition against the order of the second respondent-Tribunal, is as follows:

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The order of the Tribunal holding that the charges in the disciplinary proceedings and the charges in the criminal case are

one and the same and therefore, in view of the criminal case having ending in acquittal, the departmental proceedings, cannot be sustained and it cannot give a finding contrary to the finding of the criminal Court. The Tribunal has also not taken into consideration that the departmental proceedings which is in respect of the violation of Rule 20 of Tamil Nadu Government Servant Conduct Rules, which can be pursued by the Department independent of the criminal proceedings. The charge pertaining to violation of Rule 20 of the abovesaid Rules is totally different and independent of the charges levelled against the first respondent in the criminal case in C.C.No.5717 of 1998. The Tribunal ought not to have allowed the first respondent to retire from service with effect from 31.5.2001 when the enquiry was completed on 18.9.2001 and final orders were to be passed by the disciplinary authority. On the contrary, the Tribunal should have dismissed the application and allowed the disciplinary authority to pass final orders based on the enquiry report and thereby, allowed the Department to conclude the disciplinary proceedings. The further contention is that the Tribunal exceeded its jurisdiction in going into the scope of the disciplinary proceedings, in view of the fact that the first respondent has not challenged the charge memo and his application is only confined to the order dated 30.5.2001 not permitting him to retire from service pending disciplinary proceedings.

5. On going through the order of the Tribunal, it is apparent that the reasoning of the Tribunal is that for the charges framed against the first respondent and the other accused in Crime No.616 of 1998 in C.C.No.5717 of 1998, by judgment dated 31.3.2000 of the learned Magistrate, both the accused were acquitted of the charges and found not guilty, therefore, the Tribunal, in paragraph 3 held as follows:

> "A copy of the charge memo is found in page 10 of the typed set of papers. In charge memo, it is merely stated that the applicant was responsible for leaking out the question papers in respect of SSLC examination held in April 1998. In the charge memo also it is stated that the role played by the applicant in the episode has come to light only when the investigation was done by the police in connection with the criminal case. Even details are not mentioned in the charge memo. Therefore, the charge memo is entirely based on the investigation done in the criminal case. As already referred to, investigation has led to filing of a charge sheet, ultimately resulting in a finding of not guilty and acquittal of the applicant."

According to the Tribunal, the charge memo is based only on the alleged investigation done by the Police in connection with the criminal case and no details are mentioned.

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6. Two charges framed against the first respondent by the Department are as follows:

> "On the investigation made by the Police (Crime) Department that the above said Thiru.N.Venugopal was found responsible for the leakage of the SSLC Xth Public Examinations Question Papers held on during April 1998 before the commencement of the examination. He was arrested on 20.5.1998 at 17.00 hours at the Red Hills Bus Stand. By this rule 20 of Tamilnadu Government Servants' Conduct rules has been violated by him by his unbecoming act."

> "Investigation was made by the Police (Crime) Department, and on 20.5.98 at Redhills Bus Stand at about 17.00 hours, Thiru.N.Venugopal, B.T.Assistant (Tamil) Government Higher Secondary School, Sholavaram Thiruvallur District was arrested for his involvement in the leakage of S.S.L.C. Examination of 1998 Question Papers before the commencement of the examination. By this rule 20 of the Tamil Nadu Government Servants Conduct rules has been violated by him by his unbecoming act."

Further, in Annexure-3 to the charge memo, the material documents which were relied upon in support of the charge memo has also been given. In that, the report of the Additional Director, Police Department (Crime Branch) dated 5.6.1998 has been enclosed. The relevant portion of the report is as below:

> "On information, Inspector of Police, P1 Pulianthope P.S. (Law & Order) conducted surprise check the Suresh Xerox, housed at No.29, Pulianthope High Road, Chennai on 16.4.98, one Chinnadurai S/o. Muthusamy was found in possession of 59 copies of Xth Std. English-II paper Public Examination Question Papers and seized the said copies of question Papers and arrested the said accused. In this connection, a case in P1 Pulianthope P.S.Cr.No.616/98 u/s 380, 411 IPC, 457 & 381 IPC was registered. Subsequently this case was transferred to Crime Branch, C.I.D. for taking up further investigation.
>
> 2. During the course of investigation by C.B.C.I.D., it came to light that one Venugopal, who is now working as a Tamil Teacher in Sholavaram Government Higher Secondary School had sold Public Examination

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language and Arts question paper of X Std. and Plus 2, to the public. The said Venugopal was arrested on 20.5.98 at 17.00 hrs. at Red Hills Bus Stand. During the interrogation he voluntarily gave a confession statement in the presence of independent witnesses in which he had stated that he had purchased Public Examination question papers of X Std. and Plus 2 from one Kannadhasan who is also working as a Tamil Teacher in Jayagopal Garadia Government High School, Thiruvottiyur. Following his confession statement, the said Kannadhasan, S/o Veerannan was arrested on 20.5.98 at 19.50 hrs. and was interrogated. He had stated that on the instigation of Venugopal, he had fabricated a duplicate key for one of the three almirahas (which were kept in the school) in which the Public Examination question papers of X Std. and Plus 2 were stored and committed theft of Plus 2 Public Examination question paper on 10.3.98, and committed theft of X Std. Public Examination question papers on 13.4.98 respectively and sold them to Venugopal and also to several others. Both the accused were produced before Vth Metropolitan Magistrate Egmore on 21.5.98 and taken into police custody for 4 days.

Both the accused were thoroughly interrogated, during the custody period i.e. between 21.5.98 and 25.5.98 about their involvement in the leakage of Science question paper and they were surrendered before the court on 25.5.98. Now both the accused are lodged in Central Prison, Chennai as remanded prisoners."
(emphasis supplied)

Hence, based on these materials, the charge memo was issued. Further, the enquiry was conducted after issue of the charge memo and a detailed enquiry report has been submitted. On a perusal of the report of the enquiry officer, it is apparent that the enquiry has proceeded only for violation of Tamil Nadu Government Employees Conduct Rule 20. A detailed enquiry has been conducted as contemplated under the Rules. The Tribunal has not taken into consideration all these material factors, but has simply assumed that in view of the acquittal in the criminal court, the departmental proceedings cannot be continued and a contra finding cannot be given. This is based on a misreading of the decision of the Supreme Court reported in AIR 1999 SC 1416 (Paul Anthony's case).

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7. In Paul Anthony's case, in paragraph-22, the Supreme Court has set out the guidelines with regard to the proceedings

before the criminal court and departmental proceedings, which reads thus:

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
>
> (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
>
> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

There is no finding that if the criminal Court acquits the person concerned, the Department proceedings should be dropped in every case.

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8. The incident for which the first respondent is proceeded departmentally relates to the leakage of question paper, which occasioned the arrest of other accused including the first respondent. After investigation, the charge sheet was filed and after trial, the first respondent was acquitted. A reading of the judgment of the criminal Court, it is clear that the accused were acquitted only on the ground that the investigation was not properly done and there were several missing links and therefore, the truth could not be brought out. The observation of the Criminal Court in paragraph 17 does not support the first respondent's plea that he was honourably discharged. In this regard, it will be relevant to refer paragraph 11 of the judgment of the Supreme Court reported in 2005 (7) S.C.C. 764 (Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpn. Ltd):

> 11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal Court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto

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absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

The principle laid down in the above referred judgment will apply to the facts of the present case.

9. In yet another judgment of the Supreme Court reported in 2003 (3) C.T.C. 494 (Lalit Popli vs. Canara Bank), it has been held as follows:

"12. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him: whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K.Meena and Ors., 1996 (6) SCC 417). In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

10. A Division Bench of this Court, in a case reported in 2005 (5) C.T.C. 672 (The Deputy Superintendent of Police vs. W.D.Sekaran), has held that if the acquittal is not honourable one, it is always open to the employer to proceed with the departmental proceedings. The Supreme Court in JT 2002 (Supp.1) SC 520 (Secretary, Ministry of Home Affairs and another vs. Tahir Ali Khan Tyagi), held as follows:

"6. Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove

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the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

7. That apart, the second part of Rule 12 of the Rules unequivocally dictates that a departmental proceeding could be initiated if in the opinion of the Court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of Rule 12, a departmental proceeding could be initiated. In this view of the matter, we are of the considered opinion that the tribunal committed error in interfering with initiation of a departmental proceeding and the High Court committed error in dismissing the writ petition filed. We, therefore, set aside the impugned judgment of the High Court as well as that of the tribunal and direct that the departmental proceeding be concluded as expeditiously as possible."

11. It is also useful to refer to another Division Bench decision of this Court in State of Tamil Nadu vs. H.A.Munaf and another (2002 (3) L.L.J. 66):

"27. It is therefore clear that it is not axiomatic that in all the cases where the criminal proceedings based on the very same set of facts ended in acquittal, the departmental action should not be proceeded with. It is by now settled that if the acquittal in the criminal proceedings is not a honourable one, it is always open to proceed with the departmental proceedings. It is also now made clear that having regard to the fact that the delinquent may apprehend prejudice in the event of the criminal proceedings and the departmental enquiry being simultaneously proceeded with, the departmental enquiry can be commenced after the final conclusion of the criminal proceedings. A honourable acquittal would only mean an acquittal which is free from any doubt. Therefore merely because a person came to be acquitted on the ground that the charge was not proved beyond all reasonable doubts, it cannot be held that the person was honourably acquitted so as to hold that he was given a clean chit of the charges levelled against him."

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12. Learned counsel for the first respondent would rely upon the Judgments reported in 1965 (1) LLJ 197 (Madras) (Shaik Kaslm Vs. Superintendent of Post Offices, Chinglepet Division), AIR 1984 Supreme Court 626 (Corporation of Nagpur Vs. Ramachandra G. Modak), 2005 (1) M.L.J. 634 (Union of India represented by its Commissioner of Income Tax, Tamil Nadu - I, Chennai Vs. The Central Administrative Tribunal, Chennai Branch, represented by its Registrar, High Court Building, Chennai) and 2005 (2) M.L.J. Page 486 (State of Tamil Nadu represented by Secretary to Government, Municipal Administration and water supply Department, Chennai Vs. M.Jayapal). It is no doubt true that in some decisions, it has been observed that on the acquittal of the delinquent on the very same allegations in the criminal case, the department cannot proceed with the departmental proceedings, however, such decisions should be confined to the facts of those cases, more particularly in view of the categorical observations made by the Supreme Court in the later decisions, such as in 2005 (7) SCC 764, 2003 (3) C.T.C. 494 and JT 2002 (Supp.1) SC 520 (cited supra).

13. We have perused the above Judgments in the light of the facts of the present case. However, we find that the decisions relied upon by the first respondent do not lay down a proposition which is any way different from the various decisions of Supreme Court which have been extracted in detail in the earlier portion of this order. The contention of the learned counsel for the first respondent therefore that once a criminal case ends in acquittal no departmental action can be taken does not have any merits.

14. Therefore, we have no hesitation to hold that the Tribunal had committed an error in going into the merits of the charge memo in the departmental proceedings only on the ground that the first respondent was acquitted in the criminal case. The departmental proceedings and criminal proceedings operate in totally different sphere. As has been urged by learned counsel for the petitioner, the charge memo is relating to the conduct of the first respondent in discharge of his duties having caused disrepute to the institution and rightly so, they are entitled to initiate and conclude disciplinary proceedings as provided under the Rules. The Tribunal therefore exceeded its jurisdiction in quashing the order dated 30.5.2001, particularly when the charge memo is not challenged.

15. In view of the settled legal position as above, we find no infirmity in the departmental proceedings being continued and the order of the Tribunal setting aside the suspension order is liable to be interfered with. The Department is permitted to proceed with the disciplinary proceeding in accordance with law and conclude the same expeditiously preferably within a period of two months from the date of communication of this order. It is made clear that this Court has not expressed anything on the merits on the charges levelled against the first respondent, as

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we are only concerned with the legal issue that even after an order of acquittal by the criminal Court, whether the Department is entitled to proceed against the delinquent, which in the present case, is answered in the affirmative.

16. In course of hearing, the learned counsel appearing for respondent No.1 brought to our notice the order passed in departmental proceedings against the co-delinquent to the effect that such co-delinquent has been awarded punishment of censure as per order in R.C.No.58926/C-8/C-31/98, dated 14.11.2003. Learned counsel appearing for the State, however, was not in a position to either confirm or rebut such submission. It goes without saying that the disciplinary authority while finalising the disciplinary proceedings would consider the above aspect in accordance with law.

17. With the above observations, the writ petition is allowed. No costs.

cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Joint Director of School Education (Personnel),
Chennai-600 006.

+ one cc to Government Pleader, SR.No.10057.
+ one cc to M/S.Anand and Surya, Advocates Sr.No.9842.

SKV (CO)
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